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Advocate General's Opinion in Case C-829/24 | Commission v Hungary (Protection against foreign political interference)

Advocate General Kokott: Hungary infringed EU law by adopting the Law on the protection of national sovereignty

In December 2023, Hungary adopted Law LXXXVIII on the protection of national sovereignty. That Law establishes a Sovereignty Protection Office, an independent body responsible for identifying organisations or persons that have activities carried out in the interest of other States and foreign actors, in particular using foreign support, which are liable to influence democratic processes and the will of voters and, therefore, to harm or jeopardise Hungary's sovereignty. The Office enjoys broad discretion and has powers of investigation that are not subject to any judicial review. It can request any information, including personal data, which it can forward to the competent national authorities so that other measures may be taken. It is empowered to publish the findings of its investigations and to publish annual reports.

Claiming that Hungary had failed to fulfil its obligations under a number of provisions of primary and secondary law governing fundamental freedoms, of the Charter of Fundamental Rights of the European Union ('the Charter') and of the General Data Protection Regulation (GDPR), ¹ the European Commission brought action for failure to fulfil obligations before the Court of Justice. The Commission does not dispute the legality in the light of EU law of requirements intended to prevent, detect, make transparent, prohibit or impose criminal penalties on the direct or indirect financing of Hungarian political parties or their candidates for election. Member States are, in principle, free to protect their elections and the will of voters from inappropriate foreign interference.

Hungary contests the Commission's claims and asserts that it has exclusive competence, on the basis of its sovereignty and its national identity and national security, ² to enact and implement that legislation. It also disputes that the European Union has competence in such matters and that the legislation in question has any impact on the implementation of and compliance with EU law.

Advocate General Juliane Kokott proposes that the Court should find that Hungary has failed to fulfil its obligations under EU law in several respects by adopting the Law on the protection of national sovereignty.

She is of the view that the provisions of the Law and the measures that may be adopted under them are capable of affecting the application of EU law. Moreover, the investigative powers of the Office are legally binding and liable to affect cross-border economic activities falling within the scope of the fundamental freedoms. The pleas of lack of competence on which Hungary relies, on the basis both of sovereignty and of the absence of any impact on EU law, must therefore be rejected.

The 'requirements' imposed on foreign service providers, that is to say, the Office's powers of investigation and disclosure together with the corresponding obligations to cooperate, are indirectly discriminatory. **Measures to prevent, *inter alia*, interest representation activities, activities intended to influence domestic democratic discourse and processes in the interest of other States and foreign actors, and information manipulation and disinformation coming from those States or actors, should be recognised as legitimate. The powers conferred on the Office are, nevertheless, in part, not proportionate to the legitimate aim of protecting domestic democratic discourse and processes. Hungary therefore infringed several fundamental freedoms, as specified by the 'Services' Directive.** ³

By imposing stricter requirements on information society service providers than those provided for in their Member States without informing the Member State concerned in advance, Hungary also infringed the principle of the free movement of information society services.⁴ Similarly, the restrictions on activities carried out with support from abroad infringe the free movement of capital.⁵

The threat of an investigation and of its findings being published in accusatory or stigmatising reports, and the risk of criminal proceedings, have a chilling effect and may lead to self-censorship by journalists and/or publishers and press organisations. The duty to cooperate in identifying anonymous sources also has a chilling effect. The provisions of the Law therefore constitute interference with the freedom of expression and information guaranteed by the Charter.⁶ For organisations and associations, those measures make their activities, their financing and the achievement of their objectives more difficult, which constitutes an interference with the freedom of association.⁷ Since the Office's investigative procedures are non-administrative, it is not clear that the Office is actually bound by professional secrecy between lawyer and client. That obligation should therefore be found to have been infringed.⁸

The Law authorises the Office to process personal data, without, however, laying down sufficiently clear and precise limitations that are proportionate in the light of the objectives of general interest pursued. Advocate General Kokott is therefore of the view that the contested law complies neither with the provisions of the GDPR⁹ nor with the fundamental rights guaranteed by the Charter.¹⁰

NOTE: The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

NOTE: An action for failure to fulfil obligations directed against a Member State which has failed to comply with its obligations under EU law may be brought by the Commission or by another Member State. If the Court of Justice finds that there has been a failure to fulfil obligations, the Member State concerned must comply with the Court's judgment without delay. Where the Commission considers that the Member State has not complied with the judgment, it may bring a further action seeking financial penalties. However, if measures transposing a directive have not been notified to the Commission, the Court of Justice can, on a proposal from the Commission, impose penalties at the stage of the initial judgment.

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The [full text](#) of the Opinion is published on the CURIA website on the day of delivery.

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¹ Articles 49, 56 and 63 of the Treaty on the Functioning of the European Union (TFEU), Article 3 of [Directive 2000/31/EC](#) of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce'), Articles 14, 16 and 19 of [Directive 2006/123/EC](#) of the European Parliament and of the Council of 12 December 2006 on services in the internal market, Articles 7, 8, 11, 12, 47 and 48 of the Charter and Articles 5, 6, 9 and 10 of [Regulation \(EU\) 2016/679](#) of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation).

² Article 4(2) TFEU.

³ In particular, Article 16 (freedom to provide services), Article 19 (freedom to receive services) and Article 14 (freedom of establishment) of Directive 2006/123/EC.

⁴ Article 3 of Directive 2000/31.

⁵ Article 63 TFEU.

⁶ Article 11(1) of the Charter.

⁷ Article 12(1) of the Charter.

⁸ Article 7, read in conjunction with Article 47 of the Charter.

⁹ Article 5(1) (principles relating to processing of personal data), Article 6(1)(e) (processing necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller), Article 6(2) and (3) (legal bases for the processing), Article 9(2)(g) (processing necessary for reasons of substantial public interest) and Article 10 (processing relating to criminal convictions and offences) of the GDPR.

¹⁰ Articles 7 and 8 of the Charter.